Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	

OPPOSITION/SUPPORT OF
KMC TELECOM, INC.

KMC Telecom, Inc. ("KMC"),[1] by its attorneys, hereby submits the following opposition to, and support for, certain aspects of the petitions by BellSouth Corporation ("BellSouth") and the United States Telecom Association ("USTA") for reconsideration of the *Second Report and Order* in the above-captioned proceeding.[2] As explained in more detail below, a carrier that is subject to a random audit should not be forced to bear the full costs of that audit, and utilization rates and Months-To-Exhaust ("MTE") should be calculated on a per-switch basis if a carrier operates multiple switches in a single rate center.[3] Therefore, KMC opposes the suggestion of USTA that carriers subject to random audits should bear the full costs of those audits, and supports the request by BellSouth and USTA that the Commission reverse its decision to prohibit carriers that operate multiple switches in a single rate center from calculating utilization rates and MTE on a per-switch basis within a rate center.

1 KMC is a facilities-based Competitive Local Exchange Carrier ("CLEC") competing in many states across the country. KMC and its affiliates are building high-speed, high-capacity advanced fiber optic networks to provide various services to business customers, including local and long distance voice and data services.

2 *Numbering Resource Optimization and Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 99-200 and 96-98, FCC 00-420 (rel. Dec. 29, 2000) ("*Second Report and Order*").

3 *See id.* at ¶ 31, n.60.

I. THE COMMISSION SHOULD NOT REQUIRE A CARRIER THAT IS SUBJECT TO A RANDOM AUDIT TO BEAR THE FULL COSTS OF THAT AUDIT

In the *Second Report and Order*, the Commission concluded "that the costs associated with [its] comprehensive auditing program are numbering administration costs and, as such, they should be borne by all telecommunications carriers on a competitively neutral basis."[4] In its petition for reconsideration, USTA expresses concern about this conclusion, observing that "[o]ther audits conducted under the Commission's auspices are paid for by the carriers who participate in the audits, not the industry as a whole."[5] USTA then states simply that it "sees no reason to deviate from this well-established policy."[6]

KMC opposes USTA's petition for reconsideration to the extent that USTA asks the Commission to require a carrier that is subject to a random audit to bear the full costs of that audit. Random audits, by design, do not target carriers that are suspected to have violated the Commission's numbering rules. Thus, carriers that have been diligent in complying with the Commission's numbering rules might find themselves subject to a random audit. It would be unfair and discriminatory to require these carriers to bear the full costs of these audits, which could be high. Therefore, KMC urges the Commission to affirm its conclusion that the costs for random audits should be borne by all telecommunications carriers on a competitively neutral basis.

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4 *See id.* at ¶ 98.

5 USTA Petition for Reconsideration at 7.

6 *See id.*

II. THE COMMISSION SHOULD ALLOW CARRIERS TO CALCULATE UTILIZATION RATES AND MTE ON A PER-SWITCH BASIS WITHIN A RATE CENTER

The Commission's rules currently require an applicant for a growth code to demonstrate that it meets the applicable utilization threshold and that its current inventory of numbering resources will exhaust within six months or less.[7] The applicant must calculate both its utilization rate and its projected months-to-exhaust ("MTE") based on all of the numbering resources in its current inventory for the rate center to which the growth code will be allocated. Moreover, if a carrier installs a new switch in a rate center where it already has a switch, its application for a code for the new switch is treated like a request for a "growth" code rather than an "initial" code,[8] regardless whether the carrier can actually use numbering resources from its existing switch to serve its new switch.

The Commission's rules have the intended effect – ensuring that carriers utilize numbering resources efficiently and apply for growth codes only when necessary – where an applicant has only one switch in the rate center for which it is requesting a growth code. However, the rules have unintended consequences where an applicant has multiple switches in a single rate center, because codes must be assigned to specific switches, and it is not always technologically or economically feasible to use numbering resources assigned to one switch to serve another switch within the same rate center.[9] Under these circumstances, a carrier may

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7 *See* 47 C.F.R. § 52.15(g).

8 Applicants for initial codes are not required to calculate a utilization rate or MTE for the rate center to which the code will be allocated.

9 KMC agrees with BellSouth that the Commission's suggestion that carriers can resolve this problem unilaterally by implementing certain measures, such as intra-rate center and intra-company porting of numbers, oversimplifies the problem and underestimates current technical limitations. *See* BellSouth Petition for Reconsideration at 7-8.

exhaust its numbering resources in one switch but not qualify for a growth code due to its numbering inventory in another switch within the same rate center. Similarly, a carrier that installs a new switch in a rate center where it already has a switch may not qualify for an initial code for the new switch due to its numbering inventory in the existing switch.

The Commission should permit applicants for growth codes to calculate utilization rates and MTE on a per-switch basis within the relevant rate center – and consider applications for new switches to be requests for "initial" codes – because the current rules discriminate against applicants that have multiple switches in a rate center. For example, a carrier that installs a new switch in a rate center that is adjacent to a rate center in which it already has a switch is eligible to apply for an "initial" code for the new switch, but a carrier that installs a new switch in a rate center in which it already has a switch is only eligible to apply for a "growth" code for the new switch. Similarly, a carrier that has only one switch in a rate center will be eligible for a growth code as soon as it nears exhaust within that switch, but a carrier that has more than one switch in a rate center will not be eligible for a growth code until it nears exhaust within all of the switches in that rate center. Thus, carriers with multiple switches in a rate center may not be eligible for a code despite having no numbering resources available for use in one of the switches. Therefore, the current rules violate the Act's mandate that the Commission "make . . . numbers available on an equitable basis."[10]

There are legitimate reasons for some carriers to deploy multiple switches within a rate center, all of which are based ultimately on customer demand. Because carriers incur

[10] 47 U.S.C. § 251(e)(1).

substantial costs to deploy switches,[11] they deploy additional switches in a single rate center only where necessary to meet customer demand in a more efficient manner. However, the Commission's current rules force carriers either to forego the deployment of additional switches within a single rate center, or to adopt an inefficient network configuration so that it can deploy the additional switch within a different rate center. Forcing carriers to make this choice is fundamentally inconsistent with the 1996 Act and the Commission's goal of promoting facilities-based competition.[12] Moreover, if the Commission's efforts to encourage rate center consolidation are successful, many more carriers will have multiple switches within a single rate center. These carriers should not be penalized solely because a state commission's decision to consolidate rate centers causes them to have multiple switches in a single rate center.

The Commission's current rules also significantly lessen the chances that further rate center consolidation efforts will be successful. KMC strongly supports rate center consolidation and enthusiastically welcomes the Commission's efforts to encourage states to explore further rate center consolidation. However, support for various rate center consolidation proposals will inevitably dissipate if carriers are concerned that they will not be able to obtain numbering resources they need to serve their customers because the resulting consolidated rate centers will encompass more than one of their switches. Thus, the Commission's current rules are inconsistent with its efforts to encourage further rate center consolidation.

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11 *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, ¶ 259-166 (1999) (discussing costs of self-provisioning switches).

12 *See, e.g., Promotion of Competitive Networks in Local Telecommunications Markets,* First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-217, FCC 00-366 (2000) at ¶ 4 (discussing Commission's goal to promote facilities-based competition).

Finally, the Commission's current rules are inconsistent with its longstanding guidelines that numbering administration should: (1) seek to facilitate entry into the communications by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.[13] As explained above, the current rules do not make numbering resources available on an efficient and timely basis and they disadvantage industry segments, groups of consumers and technologies that rely on the deployment of multiple switches within a single rate center. Accordingly, KMC urges the Commission to reverse its decision to prohibit carriers that operate multiple switches in a single rate center from calculating utilization rates and MTE on a per-switch basis within a rate center. For the same reasons, the Commission should reverse its decision to require carriers to file applications for "growth" codes rather than "initial" codes when they install new switches in rate centers where they already have a switch.

[13] *See, e.g., Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois,* 10 FCC Rcd 4596, 4606, ¶ 18 (1995).

III. CONCLUSION

For the foregoing reasons, KMC urges the Commission to affirm its conclusion that the costs for random audits should be borne by all telecommunications carriers on a competitively neutral basis, and reverse its decision to prohibit carriers that operate multiple switches in a single rate center from calculating utilization rates and MTE on a per-switch basis within a rate center. The Commission should also reverse its decision to require carriers to file applications for "growth" codes rather than "initial" codes when they install new switches in rate centers where they already have a switch.

Respectfully submitted,

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Dated: April 12, 2001

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